

HIGH COURT OF MADHYA PRADESH: JABALPUR**SB: HON'BLE SHRI JUSTICE M.K. MUDGAL, JUDGE**Second Appeal No.2448 / 2005.

Gulab Bai and others*Appellants / Plaintiffs*
Versus
State of M.P. and another*Respondents / Defendants*

Shri Sanjay Agrawal, Advocate for the appellants / plaintiffs.

Shri D.K. Parouha, learned PL for the respondents / State.

JUDGMENT
(09/03/2015)

The appellants / plaintiffs have filed this appeal under Section 100 of the Code of Civil Procedure being aggrieved by the judgment and decree dated 11.8.2005 passed by the Court of First Additional Judge to the Court of First Additional District Judge, Satna in civil appeal no. 64-A/05 affirming the judgment and decree dated 17.12.2002 passed by the Court of Second Civil Judge Class-2, Satna in Civil suit no. 6-A/01, whereby the suit filed by the appellants / plaintiffs for declaration of title to the survey no. 533 area 0.30 acres and survey no.538 area 21.49 acres situated in village Sarai, district Satna was dismissed. In this appeal the appellants are referred to as the plaintiffs and the respondents as the defendants.

2. Undisputed facts of the case are that Arjun Singh was the Bhumiswami of the disputed agricultural land bearing surveys no. 535 and 538. He died issue-less. Proceedings under section 177 of the M.P. Land Revenue Code were initiated by the court of the Tahsildar, Tahsil Rampur Baghelan, District Satna bearing case no. 2-A/26/98-99 for declaration of the said land to be an abandoned holding and in this regard an order dated 3.10.2000 Ex.P/48 was passed by the Court.

3. The facts of the case in brief are that the plaintiffs filed the suit for declaration of title to the court of the Second Civil Judge Class-2, Satna alleging that the said disputed land was given by the earlier Bhumiswami Arjun Singh to Mahesh Prasad as sub tenant. Mahesh Prasad who was the ancestor of the plaintiffs had been in possession of the disputed land till his death. Thereafter, the plaintiffs being their heirs

became sub tenant and have been cultivating the land since then because of that the plaintiffs have acquired right of occupancy tenant as defined under section 185 of the M.P. Land Revenue Code and they have become Bhumiswami by operation of law as per section 190 of the M.P. Land Revenue Code. The disputed land has never been abandoned land. The order Ex.P/48 passed by the Tahsildar is totally contrary to law. When the proceedings were initiated before the Court of Tahsildar, objections were filed by the plaintiffs claiming themselves to have Bhumiswami rights to the land but the said objections were rejected by the court of Tahsildar arbitrarily. On the aforesaid grounds, the plaintiffs have filed the suit for the relief as stated earlier.

4. None appeared on behalf of the defendants though served and written statement had not been filed by the defendants / State Government.

5. Heard the arguments of both the parties.

6. The learned trial court having considered the recorded evidence has arrived at the conclusion that the plaintiffs have failed to prove their case that the disputed land was leased out by the deceased Arjun Singh to Mahesh Prasad who was allegedly the ancestor of the plaintiffs. The entries made in the khasras in the name of Mahesh as sub tenant have no relevance because the Competent Authority has not passed any order to make such entries in the khasra in the name of Mahesh Prasad because of that the said entries being contrary to law cannot support the claim of the plaintiffs. The learned appellate court also having considered the merit of the case has confirmed the findings of the trial court holding that as no lease deed allegedly granted by the deceased Arjun Singh has been produced on record. Apart from this, it has not been pleaded and proved by the plaintiffs' evidence as to when Arjun Singh died and in which year the land was leased out to Mahesh Prasad. The Appellate court has further observed in para 16 that it has also not been brought on the record when Mahesh Prasad died. Though, the defendants / State Government have failed to file their written statement yet the plaintiffs had to prove their case by their reliable and cogent evidence and so the findings recorded by the trial court were affirmed by the appellate court.

7. The learned counsel for the appellants / plaintiffs strenuously argues that when the name of Mahesh Prasad was entered in the khasras

and Khasra entries, Ex.P/8, P/9, P/10, P/11, P/12, P/13, P/14 and P/15 in the year 1969-70/1973-74 and continued to remain unchanged upto year 1998-99 and on the basis of which Mahesh Prasad had acquired the right of occupancy tenant as well as Bhumiswami by operation of the law under section 190 of the M.P.L.R.Code both the learned courts below have committed an error in disbelieving the said khasra entries whereas there was no reason before the courts below for doing the same. The learned counsel for the appellants further pleads that Mahesh Prasad had been in continuous possession of the disputed land for more than 50 years on account of this, Mahesh Prasad and his successors also acquired the right of Bhumiswami on the basis of adverse possession. Moreover, no written statement was filed on behalf of the State denying the allegations made in the plaint.

8. Learned Panel Lawyer for the respondents opposing the submissions made on behalf of the appellants / plaintiffs has submitted that the plaintiffs have failed to prove that the disputed agricultural land was leased out by Arjun Singh to Mahesh Prasad as sub tenant. Merely on the basis of the entries in Khasra in the name of Mahesh Prasad, the right of occupancy tenant and consequently Bhumiswami cannot be acquired because no order was passed by the competent authority for making the said entries, owing to which, if the entries had been made by the Patwari unauthorizedly the said entries can not be considered to be reliable to support the title of the plaintiffs. Learned Panel Lawyer further pleads that the Bhumiswami right cannot be acquired by way of adverse possession. On the aforesaid grounds, learned PL has prayed for dismissal of the appeal.

9. On perusal of the pleadings of the plaint it is evident that important facts have not been pleaded in the plaint. It has not been mentioned in the pleadings when Arjun Singh died and in which year the disputed land was leased out by Arjun Singh to Mahesh Prasad as sub tenant. To prove the terms and conditions of the contract, it should have been pleaded specifically in the plaint as to on which date and time, the contract for sub tenancy was made between Arjun Singh and Mahesh Prasad. Moreover, no written document to prove the sub tenancy has been produced on record. Apart from this, oral evidence produced by the plaintiffs is also unreliable. In the said circumstances, both the learned courts below have not committed any error in holding that the contract of

leasing the disputed land as sub tenant made by Arjun Singh in favour of Mahesh Prasad had not been proved.

10. So far as the khasra entries are concerned, no order was passed by the competent authority for making the said khasra entries. A Patwari has no right to make khasra entries without any competent authority passing the order. In the judgment of this Court in the case of **Churamani and others vs. Shri Ramadhar and others, 1991 RN 61 (D.B.)** too has categorically held that an entry made by the Patwari in the remark column or any other column of a khasra or field book no presumption of correctness can be attached as per section 117 of the M.P. L.R.C. The Division Bench further held that the Patwari is not required to make any kind of entry in the khasra or field book under Chapter 9 of the M.P.L.R.C. In this view of the matter, even if any entry in column no. 12 is made by the Patwari in the khasra it would not mean that the plaintiff is in possession of the suit property. Hence, keeping in view the proposition of law it is held that the khasra entries Ex.P/8 to Ex.P/15 about the disputed land were made by the Patwari without any order passed by the competent authority, because of this, the said entries cannot be relied upon to prove the title of the plaintiffs. The entry of the name of Mahesh Prasad was made first as sub tenant in the year 1969-70 Ex.P/8. The said entry was unauthorized as no order has been produced by the plaintiffs showing that the entries were made in compliance with the order passed by a competent authority and hence, subsequent entries made thereafter on the basis of the said entries have also no relevance. On the basis of unauthorized khasra entries, the status of Mahesh Prasad as sub tenant cannot be held to be proved. In the said circumstances, both the learned courts below have not committed any error in discarding the title of Mahesh Prasad on the basis of the said entries.

11. So far as the question of title on the basis of adverse possession is concerned, it has been settled by the Hon'ble Apex Court in the case of **Gurudwara Saheb vs. Gram Panchayat Village sirthala and others, 2014 Vol.1 SCC 669** that the right of ownership cannot be claimed on the basis of adverse possession. Apart from this, a Full Bench of this Court in the case of **State of Madhya Pradesh and others vs. Balveer Singh and others, 2001 (3) MPHT 255**, has also held that the Bhumiswami right cannot be acquired on the basis of adverse possession.

12. Considering the aforesaid judgments it is concluded that the

plaintiffs' right of Bhumiswami cannot be accrued on the basis of adverse possession. Analyzing the pleadings and evidence on record it is concluded that both the learned courts below have rightly arrived at the conclusion that the plaintiffs have failed to prove their case. The findings recorded by both the learned courts below are hereby confirmed. Both the learned courts below have concurrently held that the plaintiffs are not entitled to get any relief in this case as the status of sub tenant of Mahesh Prasad has not been found proved. Since, no substantial question of law is involved in this appeal, the appeal is hereby dismissed.

(M.K.Mudgal)
Judge
09/03/2015

Parouha/-